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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,816	09/19/2001	Davidson Lewis	028732.0002	1696
22467	7590	01/04/2006	EXAMINER	
WILLIAMS MULLEN FOUNTAIN PLAZA THREE, SUITE 200 721 LAKEFRONT COMMONS NEWPORT NEWS, VA 23606			SPISICH, MARK	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/955,816

Applicant(s)

LEWIS ET AL.

Examiner

Mark Spisich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Receipt is acknowledged of a petition to withdraw the abandonment of this application filed 13 January 2005. The petition was granted and a notice to this effect as mailed 16 February 2005.

#### ***Drawings***

The drawings were received on 13 January 2005. These drawings are approved.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4-9 and 11- 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Albarelli (USP 4,150,970). The patent to Albarelli discloses a porous flexible container (10) comprised of a mesh synthetic polymeric material (column 3, lines 1-18) and further wherein the container includes inner and outer surfaces (which are each "abrasive" as the mesh is exposed at both surfaces) and wherein the container includes one closed end (14) and an open end (16) through which an article (24) may be placed into the bag and further wherein the open end is adjustable by means of a drawstring (40) and loop near the opening. The recitation of the intended use fails to define over the structure of Albarelli.

3. Claims 1,2 and 4-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Loon III (USP 5,050,999). The patent to Van Loon discloses a porous container

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having a closed end (see figs 7-8) and an open end which is adjustable by means of a cord (30) and which is comprised of a netting material of plastic which may also be woven (column 3, lines 5-18). The recitation of the intended use fails to define over the structure of Van Loon.

4. Claims 1,2,7 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by McGuire (USP 1,915,196). The patent to McGuire discloses a porous container (10) made of a porous abrasive material (see fig 3) having at least one opening (14). The recitation of the intended use fails to define over the structure of McGuire.

5. Claims 1,2,4,5 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kahnweiler (USP 618,943). The patent to Kahnweiler discloses a porous container (a) of net material having at least one opening which is adjustable by means of a string (c). The recitation of the intended use fails to define over the prior art.

6. Claims 1,2,4-9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 1,208,680. '680 discloses a porous (a mesh material as in the figures) including a closed (2) and adjustable open end (by means of cord 3) and which is for produce or vegetables (the German for vegetable is gemuse; column 1, line 8). The container is further comprised of an artificial material (kunststoffaden).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3,14-16,18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1,208,680 in view of Belmont (USP 2,585,214). '680 discloses the invention substantially as claimed with the exception of the opening including an elastic edge. The patent to Belmont discloses a produce bag (10) which is provided with an elastic (15) open end. It would have been obvious to one of ordinary skill to have provided such an elastic to the device of '680 so that the bag would close by itself and not come undone until desired by the user.

9. Claims 3,14 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Loon, III (USP 5,050,999) in view of Shaw (USP 2,671,486). The patent to Van Loon discloses the invention substantially as claimed with the exception of the elastic opening. The patent to Shaw discloses a bag (10) provided with an elastic (12) at the open end thereof. It would have been obvious to one of ordinary skill to have provided such an elastic to the bag of Van Loon so that the bag would at least partially close on its own.

### ***Response to Arguments***

10. Applicant's arguments filed 13 January 2005 have been fully considered but they are not persuasive. In response to applicant's argument that the prior art devices are not for the purpose of cleaning produce, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The "abrasive surface" of the present invention is provided by a plastic mesh material.

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The prior art devices each possess the **structure** positively recited in the claim(s). See Albarelli (column 3, lines 4-18), Van Loon, III (column 3, lines 17-28), McGuire (page 1, lines 57-67), Kahnweiler (page 1, line 21-23) and DE '680. Applicant has not presented a persuasive argument that the mesh materials of the prior art differ in structure from that of the claim(s). Mere differences between a claimed device and the intended use thereof fail to define over a prior art device having all of the claimed structural limitations.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS